APPENDIX

CONSTITUTION OF LOUISIANA

Art. I, Sec. 2. No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes andafter just and adequate compensation is paid.

Art. II, Sec. 1. The powers of the government of the State of Louisiana shall be divided into three distinct departments—legislative, executive, and judicial.

Sec. 2. No one of these departments, nor any person or collection of persons holding office in any one of them, shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Art. III, Sec. 1. The legislative power of the State shall be vested in a Legislature, which shall consist of a Senate and a House of Representatives.

Art. IV, Sec. 15. No ex-post facto law, nor any law impairing the obligation of contracts, shall be passed; nor shall vested rights be divested, unless for purposes of public utility, and for just and adequate compensation previously paid.

Art. VII, Sec. 1. The judicial power shall be vested in a Supreme Court, in Courts of Appeal, in District Courts, and in such other courts as are hereinafter provided.

CODE OF PRACTICE OF LOISIANA

Art. 5. The petitory action is that by which he who has the property of real estate, or of a right upon or growing out of it, proceeds against the person having the possession, in order to obtain the possession of the immovable property, or the enjoyment of the rights upon it, to which he is entitled.

ACT OF THE LEGISLATURE OF LOUISIANA

Act 38 of 1908. In all cases where two or more persons lay claim to land by recorded title and when neither of said claimants are in the actual possession of the land so claimed, either of the claimants may bring suit against one or all adverse claimants, and for that purpose may join one or more adverse claimants in the same suit as defendants to have the titles to the land adjudicated upon by the court having jurisdiction of the property and it shall not be necessary for the plaintiff to allege or prove possession in himself or the defendants, and this action shall be known as the action to establish title to real estate, and the judge shall decide which of the claimants are the owners of the land in dispute, provided such judgment shall in no case be *res judicata* as to persons not made parties to the suit.

CIVIL CODE OF LOUISIANA

Art. 13. When a law is clear and free from ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

Art. 1765. To all contracts there must be at least two parties: one who does, or engages to do or not to do, another

to whom the engagement is made. If this latter party make no *express* agreement on his part, the contract is called *unilateral*, even in cases where the law attaches certain obligations to his acceptance. It is called a *bilateral* or *reciprocal* contract, when the parties *expressly* enter into mutual engagements.

Art. 1766. No contract is complete without the consent of both parties. *In reciprocal contracts it must be expressed.* In some unilateral contracts the law provides that under certain circumstances it shall be presumed.

Art. 1768. Commutative contracts are those in which what is done, given or promised by one party, is considered as equivalent to, or a consideration for what is done, given, or promised by the other.

Art. 1779. Four requisites are necessary to the validity of a contract: 1. Parties legally capable of contracting. 2. Their consent legally given. 3. A certain object, which forms the matter of agreement. 4. A lawful purpose.

Art. 1780. Those only are parties to a contract, who have given their consent to it, either expressly or by implication.

Art. 1797. When the parties have the legal capacity to form a contract, the next requisite to its validity is their consent. This being a mere operation of the mind, can have no effect unless it is evinced in some manner that shall cause it to be understood by the other parties to the contract. To prevent error in this essential point, the law establishes, by certain rules adapted to the nature of the contract, what circumstances shall be evidence of such con-

sent, and how those circumstances shall be proved; these come within the purview of the law of evidence.

Art. 1798. As there must be two parties at least to every contract, so there must be something proposed by one *and accepted and agreed to by another* to form the matter of such contract; *the will of both parties must unite on the same point.*

Art. 1800. The contract, consisting of a proposition and the consent to it, *the agreement is incomplete until the acceptance of the person to whom it is proposed.* If he, who proposes, should before that consent is given, change his intention on the subject, the concurrence of the two wills is wanting, and there is no contract.

Art. 1801. The party proposing shall be presumed to continue in the intention, which his proposal expressed, if, on receiving the unqualified assent of him to whom the proposition is made, he do not signify the change of his intention.

Art. 1802. He is bound by his proposition, and the significance of his dissent will be of no avail, if the proposition be made in terms, which evince a design to give the other party the right of concluding the contract by his assent; and *if the assent be given within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow.*

Art. 1809. The obligation of a contract not being complete until the acceptance, or in cases where it is implied by law, until the circumstances, which raise such implication, are known to the party proposing; he may therefore

revoke his offer or proposition before such acceptance, but not without allowing such reasonable time as from the terms of his offer he has given, or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination.

Art. 1860. Lesion is the injury suffered by one who does not receive a full equivalent for what he *gives* in a commutative contract. The remedy given for this injury, is founded on its being the effect of implied error or imposition; for, *in every commutative contract, equivalents are supposed to be given and received.*

Art. 1861. The law, however, will not release a person of full age, and who is under no incapacity, against the effect of his voluntary contracts, on account of such implied error or imposition, except in the following cases: 1. In partition where there is a difference in the value of the portions of more than the amount of one-fourth to the prejudice of one of the parties. 2. In *sales of immovable property,* the vendor may be relieved, if the price *given* is less than one-half the value of the thing *sold;* but the *sale* can not be invalidated for lesion to the injury of the purchaser.

Art. 1870. When lesion is alleged to invalidate a partition or *sale,* the party alleging it must first prove the *value of the property sold,* in the state in which it was at the time of the contract, according to the usual terms of credit given on *sales* of property of that description. He must then show how much the *price given* was less than such value; but *if the price given was paid* at longer periods than those usually given on such *sales,* the interest for the time exceeding such usual credit must be deducted from such price; or, *if the price was paid* in shorter periods than

those of such usual credit, then the interest for the time *such payment has fallen short* of the usual credit, shall be added to *the price actually paid;* and from a comparison of the price after these additions or deductions with the estimated value, the court shall determine whether according to law applied to the circumstances of the case, there is a lesion sufficient to invalidate the contract.

Art. 1871. In all questions of lesion the value of that which was the subject of the contract at the time of making it, is the rule by which lesion is to be ascertained. Even in cases of minors, changes in value by subsequent events are not to affect the contract.

Art. 1893. An obligation without a cause, or with a false or unlawful cause, can have no effect.

Art. 1896. By the cause of the contract, in this section, is meant to the consideration or motive for making it; and a contract is said to be without a cause, whenever the party was in error, supposing that which was his inducement for contracting to exist, when in fact it had never existed, or had ceased to exist before the contract was made.

Art. 2043. The obligation contracted on a suspensive condition, is that which depends, either on a future or uncertain event, or on an event which has actually taken place, without its being yet known to the parties. *In the former case, the obligation cannot be executed till after the event;* in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known.

Art. 2044. When the obligation has been contracted on a suspensive condition, the thing, which forms the sub-

ject of the contract, is at the risk of the obligor, until the event which forms the condition has happened, subject however to the following restrictions and modifications of his responsibility: If the thing be entirely destroyed, without the fault of the debtor, the obligation is extinguished. If the thing be impaired, without the fault of the debtor, it is at the option of the creditor, either to dissolve the obligation, or to require the thing in the state in which it is without diminution of the price. If the thing be impaired, through the fault of the debtor, the creditor has the right to dissolve the obligation, or to require the thing in the state in which it is, with damages.

Art. 2232. He who claims the execution of an obligation must prove it. On the other hand, he who contends that he is exonerated, must prove the payment or the fact which has produced the extinction of the obligation.

Art. 2253. The record of an act under private signature, purporting to be a sale or exchange of real property, shall not have effect against creditors or bona fide purchasers, unless, previous to its being recorded, it was acknowledged by the party, or proved by the oath of one of the subscribing witnesses, and the certificate of such acknowledgement be signed by the parish recorder, a notary, or a justice of the peace, and recorded with the instrument.

Art. 2275. Every transfer of immovable property must be in writing; but if a verbal sale, or other disposition of such property, be made, it shall be good against the vendor, as well as against the vendee, who confesses it when interrogated on oath, provided actual delivery has been made of the immovable property thus sold.

Art. 2439. The contract of sale is an agreement by which one gives a thing for a price in current money, and the other gives the price in order to have the thing itself. Three circumstances concur to the perfection of the contract, to-wit: the thing sold, the price and the consent.

Art. 2440. All sales of immovable property shall be made by authentic act or under private signature. Except as providing in article 2275, every verbal sale of immovables shall be null, as well for third persons as for the contracting parties themselves, and the testimonial proof of it shall not be admitted.

Art. 2462. A promise to sell, when there exists a reciprocal consent of both parties as to the thing, the price and the terms, and which, if it relates to immovables, is in writing, so for amounts to a sale, as to give either party the right to enforce specific performance of same. One may purchase the right, or option to accept or reject, within a stipulated time, an offer or promise to sell; after the purchase of such option, for any consideration therein stipulated, such offer, or promise cannot be withdrawn before the time agreed upon; and should it be accepted within the time stipulated, the contract or agreement to sell, evidenced by such promise or acceptance, may be specifically enforced by either party.

Art. 2464. The price of the sale must be certain, that is to say, fixed and determined by the parties. It ought to consist of a sum of money, otherwise it would be considered as an exchange. It ought to be serious, that is to say, there should have been a serious and true agreement that it should be paid. *It ought not to be out of all proportion with the value of the thing;* for instance, the sale of a plantation

for a dollar could not be considered as a fair sale; it would be considered as a donation disguised.

Art. 2589. If the vendor *has been aggrieved* for more than half the value of an immovable estate by him *sold*, he has the right to demand *the rescission of the sale*, even in case he had expressly abandoned the right of claiming such rescission, and declared that he gave to the purchaser the surplus of the thing's value.

Art. 2590. To ascertain whether there is a lesion beyond moiety, the immovable must be estimated according *to the state in which it was, and the value which it had at the time of the sale.*